

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

WALMART INC.,

Plaintiff,

vs.

U.S. DRUG ENFORCEMENT
ADMINISTRATION; ACTING
ADMINISTRATOR TIMOTHY J. SHEA;
U.S. DEPARTMENT OF JUSTICE;
ATTORNEY GENERAL WILLIAM P.
BARR,

Defendants.

No. 4:20-cv-00817-SDJ

**UNOPPOSED MOTION BY THE ASSOCIATION OF AMERICAN PHYSICIANS &
SURGEONS TO FILE BRIEF AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF
AND ITS MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Local Rule CV-7, proposed *Amicus Curiae* Association of American Physicians & Surgeons (“AAPS”) respectfully seeks leave to file contemporaneously its 15-page brief in support of Plaintiff Walmart Inc.’s pending motion for partial summary judgment (Dkt. 21).

In support of this motion, *Amicus* AAPS states as follows:

1. In this declaratory judgment action, Plaintiff Walmart Inc. seeks clarification concerning its obligations and rights to fill prescriptions for controlled substances amid Defendants’ enforcement actions based on a “red flag” program that has never been properly authorized or justified.

2. *Amicus* AAPS has extensive experience concerning the patient-physician relationship and the need for pharmacists to fill individualized prescriptions by physicians without interference caused by profiling, “red flag,” or top-down federal agency programs. *Amicus* AAPS has many physician members who depend on the timely, affordable filling of their prescriptions by Walmart and other pharmacies.

3. On March 25, 2019, our then-President Marilyn Singleton, M.D., J.D., submitted comments to the U.S. Department of Health and Human Services (“HHS”) which objected to “robotic, top-down policies” that harm patients by interfering with prescriptions for the treatment of pain. Letter by Dr. Singleton to Vanila M. Singh, MD, MACM Chief Medical Officer Office of the Assistant Secretary for Health in HHS (“Letter by Dr. Singleton”).¹ About two months later, reflecting the deep commitment by AAPS to this issue on behalf of our physician members and their patients, our then-President-Elect Kristin Held, M.D., delivered similar comments to the federal Pain Management Best Practices Inter-Agency Task Force, in response to its Final Report during the “Roundtable Discussion on Dissemination Activities with External Stakeholders” in Washington, D.C.²

4. *Amicus* AAPS therefore has a valid stake in opposing “red flag” interference by the Defendants, the Drug Enforcement Administration and the Department of Justice, with pharmacy compliance on individualized prescriptions for approved medications. AAPS thereby has direct and vital interests in the issues presented here, and submits its amicus brief on this basis.

¹ <https://beta.regulations.gov/comment/HHS-OS-2018-0027-3426> (viewed 12/4/20).

² Letter by Kristin Story Held, M.D., to Vanila M. Singh, MD, MACM Chief Medical Officer Office of the Assistant Secretary for Health U.S. Department of Health and Human Services (May 10, 2019), <https://aapsonline.org/aaps-supports-emphasis-on-individualized-patient-care-in-report-of-pain-management-task-force/> (viewed 12/4/20).

5. *Amicus* AAPS respectfully suggests that its amicus brief would be helpful to the Court. This brief by *Amicus* AAPS is 15 pages long, which is half the length of Plaintiff's motion. Counsel for Defendants has authorized *Amicus* to represent that the United States does not oppose this filing of a 15-page brief by AAPS. Counsel for Plaintiff has consented to this filing by AAPS.

6. For the foregoing reasons, good cause exists for granting the requested relief.

WHEREFORE, *Amicus* AAPS respectfully requests that the Court grant its motion, and order that its brief, submitted contemporaneously with this motion, be deemed filed.

Dated: December 7, 2020

Respectfully submitted,

/s/ Andrew L. Schlafly
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